

WOMBLE BOND DICKINSON (US) LLP

Todd A. Atkinson (TX Bar 24121426)
717 Texas Avenue, Suite 2100
Houston, Texas 77002
Telephone: (346) 998-7801
Email: todd.atkinson@wbd-us.com

Counsel to Apical Service, LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

SMILEDIRECTCLUB, INC., *et al.*

Debtors.

Chapter 7
(Previously Chapter 11)

Case No. 23-90786 (CML)

(Jointly Administered)

**APICAL SERVICE, LLC'S APPLICATION AND REQUEST FOR ALLOWANCE
AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov>. If you do not have electronic privileges, you must file a written objection. Otherwise, the Court may treat the motion as unopposed and grant the relief requested.¹

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The undersigned counsel for and on behalf of Apical Service, LLC ("Apical"), hereby files this Application and Request for Payment of Administrative Expense Claim (the "Application")

¹ By entry of *Order Establishing Bar Date for Chapter 11 Administrative Expense Claims and Professional Fees*, the deadline to object to this application has been tolled, pending further order of the Court. *See* Doc. No. 654.

pursuant to 11 U.S.C. §§ 503(a) and 503(b)(1)(A). In support of the Application, Apical states as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. § 1409(a). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the relief requested by this Application may be granted pursuant 11 U.S.C. § 503(b).

II. FACTUAL BACKGROUND

2. Apical asserts an administrative expense claim pursuant to 11 U.S.C. § 503(b)(1)(A) against the Debtors, including SmileDirectClub LLC, (“SDC”), in the amount of \$329,320 (the “Administrative Claim”) for post-petition services performed by Apical at the request and for the benefit of the Debtors.

3. On September 29, 2023 (the “Petition Date”) SDC and its affiliated entities (collectively, the “Debtors”) filed voluntary petitions under Chapter 11 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

4. On January 26, 2024 (the “Conversion Date”), the Court converted the Debtors’ cases to Chapter 7 of the Bankruptcy Code. *See* Doc. No. 617.

5. On February 9, 2024, the Debtors filed Administrative Claims Schedule (Doc. No. 635) (the “Administrative Claims Schedule”), listing Apical as holding an administrative expense claim in the amount of \$329,320.

6. On February 14, 2024, the Court entered *Order Establishing Bar Date for Chapter 11 Administrative Expense Claims and Professional Fees*, setting March 15, 2024 as the deadline to file administrative expense claims arising between the Petition Date and the Conversion Date

(Doc. No. 654) (the “Administrative Expense Claim Bar Date Order”), and tolling the deadline to object to such claims pending further order of the Court.

7. By the Administrative Claims Schedule, the Debtors have acknowledged and agreed to the Administrative Claim. Given the Administrative Expense Claim Bar Date Order, out of an abundance of caution, Apical asserts the Administrative Claim and provides invoices in support of such claim. See **Exhibit A** (Invoice dated November 1, 2023 for \$133,440; Invoice dated December 1, 2023 for \$152,440; and Invoice dated December 26, 2023 for \$43,440). The total value of the services provided to the Debtors after the Petition Date was \$329,320.

III. LEGAL ARGUMENT

8. Apical is entitled to payment and allowance of the Administrative Expense Claim against the Debtors under Section 503(b)(1) of the Bankruptcy Code, which provides that, after notice and a hearing, there shall be allowed administrative expenses for the actual necessary costs and expenses of preserving the estate. 11 U.S.C. § 503(b)(1)(A). The Debtors have acknowledged and agreed with the Administrative Claim and Apical has met the requirements for allowance of such claim as documented by the invoices attached hereto as **Exhibit A**.

9. Apical reserves the right to amend this Application prior to any hearing on the Administrative Claim.

WHEREFORE, Apical respectfully requests that the Court enter an order allowing the Administrative Claim in the amount of \$329,320 against the Debtors, with payment to be made in accordance with the timing and priorities set forth in the Bankruptcy Code and any Order entered by the Court.

Dated: March 11, 2024

WOMBLE BOND DICKINSON (US) LLP

/s/ Todd A. Atkinson

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Houston, Texas 77002

Telephone: (346) 998-7801

Email: todd.atkinson@wbd-us.com

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CERTIFICATE OF SERVICE

I certify that on March 11, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Todd A. Atkinson

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